

TAB 90

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
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THIS DOCUMENT RELATES TO)
United States of America, et al,) Judge Patti B.
Ven-a-Care of the Florida Keys,) Saris
Inc.,)
vs.)
Boehringer Ingelheim, Corp.,) Chief Magistrate
et al.) Judge Marianne B.
Civil Action 07-10248-PBS) Bowler
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(Cross-caption appears on following page)

VIDEOTAPED DEPOSITION OF SHELDON BERKLE

VOLUME I

Naples, Florida

Friday, October 31, 2008

<p style="text-align: right;">26</p> <p>1 Altus?</p> <p>2 A. May 2005.</p> <p>3 Q. Prior to that time where did you work?</p> <p>4 A. Just prior to that I had been retired</p> <p>5 for just over a year, and prior to that with</p> <p>6 Boehringer Ingelheim in the United States, and</p> <p>7 prior to that in Canada.</p> <p>8 Q. When you say Boehringer Ingelheim in</p> <p>9 the United States, do you mean Boehringer</p> <p>10 Ingelheim Pharmaceuticals, Incorporated?</p> <p>11 A. Correct.</p> <p>12 Q. Is it okay if we refer to that</p> <p>13 sometimes today as BIPI?</p> <p>14 A. Yes.</p> <p>15 Q. Is BIPI part of a larger family of</p> <p>16 companies?</p> <p>17 MR. GASTWIRTH: Objection to form.</p> <p>18 THE DEPONENT: Yes, it is.</p> <p>19 BY MR. FAUCI:</p> <p>20 Q. Is that -- Is it okay if I call that</p> <p>21 sometimes the Boehringer Ingelheim family of</p> <p>22 companies?</p>	<p style="text-align: right;">28</p> <p>1 A. Yes, there was.</p> <p>2 Q. When was that?</p> <p>3 A. It was November 1994.</p> <p>4 Q. And when did you stop working for</p> <p>5 Boehringer Ingelheim's American operations?</p> <p>6 A. The end of 2003.</p> <p>7 Q. Upon transfer to the U.S., which</p> <p>8 specific entity did you work for?</p> <p>9 A. BIPI.</p> <p>10 Q. BIPI. What was your position there?</p> <p>11 A. Executive vice president.</p> <p>12 Q. Executive vice president.</p> <p>13 Did you have -- Did you have a position</p> <p>14 at any other Boehringer Ingelheim entities in</p> <p>15 America at that time?</p> <p>16 MR. GASTWIRTH: Objection to form.</p> <p>17 THE DEPONENT: I was a vice president</p> <p>18 for BI Corporation.</p> <p>19 BY MR. FAUCI:</p> <p>20 Q. Is it okay if we refer to that as BIC?</p> <p>21 A. Sure.</p> <p>22 Q. What about a company known as Roxane</p>
<p style="text-align: right;">27</p> <p>1 MR. GASTWIRTH: Objection to form.</p> <p>2 THE DEPONENT: Are you referring to the</p> <p>3 U.S. family or to the worldwide family?</p> <p>4 BY MR. FAUCI:</p> <p>5 Q. To the worldwide family I guess. If I</p> <p>6 -- If I use Boehringer Ingelheim family, I'm</p> <p>7 talking about the whole broad --</p> <p>8 A. The whole shebang.</p> <p>9 Q. The whole shebang.</p> <p>10 A. That's fine.</p> <p>11 Q. When did your employment begin with any</p> <p>12 Boehringer entity and the Boehringer Ingelheim</p> <p>13 family of companies?</p> <p>14 A. 1973.</p> <p>15 Q. With what entity?</p> <p>16 A. Boehringer Ingelheim Canada.</p> <p>17 Q. And obviously that's a Canadian</p> <p>18 company?</p> <p>19 A. Correct.</p> <p>20 Q. Was there a point in time when you</p> <p>21 transferred to Boehringer Ingelheim's American</p> <p>22 operations?</p>	<p style="text-align: right;">29</p> <p>1 Laboratories, did you have a position with them?</p> <p>2 MR. GASTWIRTH: Objection to form.</p> <p>3 THE DEPONENT: No.</p> <p>4 BY MR. FAUCI:</p> <p>5 Q. Can you describe in general the</p> <p>6 business of BIPI in the 1994 time frame. By</p> <p>7 business I mean, among other things, what types</p> <p>8 of products was the company marketing or selling?</p> <p>9 A. Again, it was involved in the research;</p> <p>10 basic research, clinical research and marketing</p> <p>11 sales of human pharmaceuticals. It was a</p> <p>12 relatively smaller company in the U.S.</p> <p>13 pharmaceutical business. And we were involved in</p> <p>14 a couple therapeutic areas at that point,</p> <p>15 respiratory medicine predominantly.</p> <p>16 Q. Were most of BIPI's products branded</p> <p>17 drugs or generic drugs?</p> <p>18 A. Branded drugs.</p> <p>19 Q. Can you describe the business of BIC at</p> <p>20 about the same time, the 1994 time frame.</p> <p>21 A. My understanding of what BIC was was</p> <p>22 really as a holding company for the U.S.</p>

10 (Pages 34 to 37)

<p style="text-align: right;">34</p> <p>1 the 1994 time frame?</p> <p>2 A. Yes.</p> <p>3 Q. I know I asked you this earlier, but I</p> <p>4 just see it here again. Can you tell me what you</p> <p>5 mean by the term "ethical pharmaceuticals"?</p> <p>6 MR. GASTWIRTH: Objection to form.</p> <p>7 BY MR. FAUCI:</p> <p>8 Q. What you think that means when it says</p> <p>9 head of business unit, ethical pharmaceuticals.</p> <p>10 A. Again, it refers to my responsibility</p> <p>11 for the pharmaceutical -- human pharmaceutical --</p> <p>12 marketing human pharmaceuticals in the United</p> <p>13 States.</p> <p>14 Q. And human pharmaceuticals one more</p> <p>15 time, what are those?</p> <p>16 MR. GASTWIRTH: Objection to form.</p> <p>17 Asked and answered.</p> <p>18 THE DEPONENT: Drugs that are used in</p> <p>19 the treatment of diseases affecting human beings.</p> <p>20 BY MR. FAUCI:</p> <p>21 Q. Could those be multi-source products as</p> <p>22 well as branded products?</p>	<p style="text-align: right;">36</p> <p>1 BY MR. FAUCI:</p> <p>2 Q. So when you worked for BIPI -- And I</p> <p>3 believe you said you also worked for BIC; is that</p> <p>4 correct? You had a position for BIC?</p> <p>5 A. I had -- I had a position within BIC.</p> <p>6 Q. During that time frame, approximately</p> <p>7 1994 until the end of 2003, was BIPI within the</p> <p>8 business unit ethical pharmaceuticals?</p> <p>9 A. Not -- Not through 2003.</p> <p>10 Q. Approximately what period of time was</p> <p>11 BIPI part of or within the business unit ethical</p> <p>12 pharmaceuticals?</p> <p>13 A. I believe until approximately 2000.</p> <p>14 Q. 2000.</p> <p>15 And was Roxane Laboratories included</p> <p>16 within the business unit ethical pharmaceuticals</p> <p>17 for any point within the 1994 to 2003 time frame?</p> <p>18 A. No. It was a separate division.</p> <p>19 Q. Did the business unit exist prior to</p> <p>20 1994?</p> <p>21 A. I'm -- I'm not sure what the title</p> <p>22 would have been. I'm only familiar with when I</p>
<p style="text-align: right;">35</p> <p>1 MR. GASTWIRTH: Objection to form.</p> <p>2 THE DEPONENT: Again, in the broad</p> <p>3 definition, yes, it could.</p> <p>4 BY MR. FAUCI:</p> <p>5 Q. Can you tell me which -- which</p> <p>6 businesses were included within the business unit</p> <p>7 ethical pharmaceuticals? I can rephrase that if</p> <p>8 you want.</p> <p>9 A. It depends on the time frame that we're</p> <p>10 talking about.</p> <p>11 Q. Was BIPI -- At any point in time during</p> <p>12 the time you worked for the BI family of</p> <p>13 companies in America, was BIPI included within</p> <p>14 the business unit ethical pharmaceuticals?</p> <p>15 MR. GASTWIRTH: And I'll just object to</p> <p>16 form. And also, I don't believe that this</p> <p>17 witness has said he's worked for the BI family of</p> <p>18 companies in America. So I think when you talk</p> <p>19 about where the witness has worked, we're just</p> <p>20 going to have to be specific about the companies.</p> <p>21 Okay?</p> <p>22 MR. FAUCI: Sure. That's a good point.</p>	<p style="text-align: right;">37</p> <p>1 came to the United States and was responsible for</p> <p>2 the business unit. So I can't recall and I'm not</p> <p>3 sure as to whether that acronym was used prior to</p> <p>4 1994.</p> <p>5 Q. If you look at the last full paragraph</p> <p>6 on the first page of Exhibit 1, can you read that</p> <p>7 paragraph for me.</p> <p>8 MR. GASTWIRTH: You want him to read</p> <p>9 that into the record?</p> <p>10 MR. FAUCI: Please.</p> <p>11 THE DEPONENT: Is that the paragraph</p> <p>12 beginning with "of primary"?</p> <p>13 BY MR. FAUCI:</p> <p>14 Q. That's the paragraph.</p> <p>15 A. Of primary importance to this position</p> <p>16 will be the achievement of sales and marketing</p> <p>17 objectives under OPINA, the attainment of</p> <p>18 consolidated contributions, the maximizing of</p> <p>19 synergies of the two leading entities, BIPI and</p> <p>20 Roxane, and the coordination of sales and</p> <p>21 marketing with medical and research and</p> <p>22 development.</p>

11 (Pages 38 to 41)

<p style="text-align: right;">38</p> <p>1 Q. I believe your testimony earlier was</p> <p>2 that Roxane was not included within the business</p> <p>3 unit; is that correct?</p> <p>4 A. I believe I said that it was a separate</p> <p>5 division.</p> <p>6 Q. Can you elaborate what you mean by</p> <p>7 that.</p> <p>8 A. Roxane was a separate business entity.</p> <p>9 They had their own budgets, their own plans. Any</p> <p>10 involvement that I had was really on a strategic</p> <p>11 level with Roxane.</p> <p>12 Q. So is it your testimony that the</p> <p>13 business unit was just limited to BIPI?</p> <p>14 A. The business unit was primarily BIPI</p> <p>15 plus a strategic oversight of Roxane, but Roxane</p> <p>16 had its own management team and it was</p> <p>17 responsible for the annual budgets, marketing</p> <p>18 plans, day-to-day operations.</p> <p>19 Q. But at least on a strategic level -- Is</p> <p>20 it fair to say that on a strategic level Roxane</p> <p>21 sat within the business unit?</p> <p>22 MR. GASTWIRTH: Objection to form.</p>	<p style="text-align: right;">40</p> <p>1 you were hired to maximize synergies between the</p> <p>2 two companies?</p> <p>3 A. I -- Again, I -- Certainly at that</p> <p>4 point in time my primary focus was on building</p> <p>5 the branded human pharmaceutical business within</p> <p>6 BIPI. And certainly one of my -- one of my</p> <p>7 objectives was to look down the road as to</p> <p>8 whether there were, in fact, any synergies</p> <p>9 between the BIPI operation and the Roxane</p> <p>10 operation.</p> <p>11 Q. And down the road were there any</p> <p>12 synergies that could be exploited or --</p> <p>13 A. Yeah. We --</p> <p>14 MR. GASTWIRTH: Objection to form.</p> <p>15 THE DEPONENT: We certainly did look at</p> <p>16 certain things where we were able to create some</p> <p>17 synergies, yes.</p> <p>18 BY MR. FAUCI:</p> <p>19 Q. Was this a -- a goal that-- was one of</p> <p>20 the goals that you were hired for, to look into</p> <p>21 improving the synergies or exploiting or finding</p> <p>22 synergies between these companies?</p>
<p style="text-align: right;">39</p> <p>1 THE DEPONENT: I don't think I would</p> <p>2 use the term "sat." They had a separate physical</p> <p>3 presence, separate facilities. And within the</p> <p>4 strategic oversight, yes.</p> <p>5 BY MR. FAUCI:</p> <p>6 Q. What is OPINA?</p> <p>7 A. OPINA is an acronym that stood for the</p> <p>8 optimization of the pharmaceutical business</p> <p>9 within North America.</p> <p>10 Q. The two -- I'm going to read again just</p> <p>11 from the end of that paragraph. It says, The two</p> <p>12 leading entities, BIPI and Roxane -- I'm sorry,</p> <p>13 I'm going to go back a little bit before.</p> <p>14 Of primary importance to this position</p> <p>15 will be, and then it says among other things, the</p> <p>16 maximizing of synergies of the two leading</p> <p>17 entities, BIPI and Roxane. Were there synergies</p> <p>18 between BIPI and Roxane?</p> <p>19 A. Certainly not -- not at the -- not when</p> <p>20 I first came in '94. There really were two</p> <p>21 separate businesses.</p> <p>22 Q. Did you view as one of your goals when</p>	<p style="text-align: right;">41</p> <p>1 MR. GASTWIRTH: Objection to form.</p> <p>2 THE DEPONENT: The primary reason why I</p> <p>3 was brought to the U.S. was really to grow the</p> <p>4 branded pharmaceutical business within BIPI.</p> <p>5 BY MR. FAUCI:</p> <p>6 Q. That was the primary reason?</p> <p>7 A. Right. Primary reason.</p> <p>8 Q. Was coordinating or improving upon the</p> <p>9 synergies between BIPI and Roxane a reason that</p> <p>10 you were hired?</p> <p>11 A. Yes.</p> <p>12 Q. If you turn to the next page of Exhibit</p> <p>13 2. Do you see where it says basic</p> <p>14 responsibilities, essential functions?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Can you read into the record the third</p> <p>17 bullet point.</p> <p>18 A. The one that begins with "insures</p> <p>19 optimization"?</p> <p>20 Q. That's correct.</p> <p>21 A. Sure. Insures optimization of</p> <p>22 performance in the U.S. through the development</p>

13 (Pages 46 to 49)

<p style="text-align: right;">46</p> <p>1 BY MR. FAUCI:</p> <p>2 Q. Take a moment to familiarize yourself</p> <p>3 with the document. Whenever you're ready, you</p> <p>4 can tell me if you recognize this document.</p> <p>5 A. That's fine.</p> <p>6 Q. Do you recognize this document?</p> <p>7 A. Not specific. You know, I can't</p> <p>8 remember it specifically.</p> <p>9 Q. Do you see in the upper left-hand</p> <p>10 corner it says employee bulletin?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Which company issued this employee</p> <p>13 bulletin?</p> <p>14 MR. GASTWIRTH: Objection to form.</p> <p>15 THE DEPONENT: I really don't know.</p> <p>16 BY MR. FAUCI:</p> <p>17 Q. Do you know whether this employee</p> <p>18 bulletin would have been sent to BIPI employees?</p> <p>19 A. I would assume it was.</p> <p>20 Q. Do you know whether it would have been</p> <p>21 sent to Roxane employees?</p> <p>22 MR. GASTWIRTH: Objection to form.</p>	<p style="text-align: right;">48</p> <p>1 Q. Including Roxane?</p> <p>2 A. Including Roxane.</p> <p>3 Q. Did you report to Mr. Gerstenberg?</p> <p>4 A. Yes, I did.</p> <p>5 Q. Was there anyone in between you and Mr.</p> <p>6 Gerstenberg in the hierarchy of the corporation</p> <p>7 or were you pretty much directly reporting to</p> <p>8 him?</p> <p>9 MR. GASTWIRTH: Objection to form.</p> <p>10 THE DEPONENT: I reported directly to</p> <p>11 Mr. Gerstenberg.</p> <p>12 BY MR. FAUCI:</p> <p>13 Q. On the first page in the fourth</p> <p>14 paragraph down, can you just read the first</p> <p>15 sentence into the record.</p> <p>16 A. Starting with Shelly's duties?</p> <p>17 Q. Yes. Thank you.</p> <p>18 A. Shelly's duties will mainly focus on</p> <p>19 the strategic alignment of our ethical</p> <p>20 pharmaceutical business in the U.S. and he will</p> <p>21 be responsible for the operating result for this</p> <p>22 area.</p>
<p style="text-align: right;">47</p> <p>1 THE DEPONENT: It's possible.</p> <p>2 BY MR. FAUCI:</p> <p>3 Q. Do you have any reason to believe it</p> <p>4 wasn't sent to Roxane employees?</p> <p>5 A. I don't know whether it was or wasn't</p> <p>6 to be honest with you.</p> <p>7 Q. Do you see at the second page that this</p> <p>8 document was signed by--I might mispronounce his</p> <p>9 name--Werner Gerstenberg?</p> <p>10 A. Yes. And that's correct by the way.</p> <p>11 Q. Thank you.</p> <p>12 Who is Mr. Gerstenberg?</p> <p>13 A. Mr. Gerstenberg was the CEO of</p> <p>14 Boehringer in the United States.</p> <p>15 Q. And by Boehringer in the United States,</p> <p>16 do you mean BIPI?</p> <p>17 A. I mean all the divisions. The total</p> <p>18 company.</p> <p>19 Q. So was he the CEO of BIC?</p> <p>20 A. You know, again, I don't know what the</p> <p>21 legal aspects were, but he was basically the</p> <p>22 overall country manager for the United States.</p>	<p style="text-align: right;">49</p> <p>1 Q. What is the strategic alignment of our</p> <p>2 ethical pharmaceutical business?</p> <p>3 A. Again, I think it is relative to what</p> <p>4 we have spoken about before. For those products</p> <p>5 being used for the treatment of diseases in human</p> <p>6 beings. So for -- again, on the strategic level</p> <p>7 for products marketed within BIPI and Roxane</p> <p>8 Laboratories.</p> <p>9 Q. In the next sentence it states, As in</p> <p>10 other countries business will develop in line</p> <p>11 with the strategy of the strategic business unit</p> <p>12 (SBU) ethical pharmaceuticals BIGmbH. What is</p> <p>13 the strategic business unit ethical</p> <p>14 pharmaceuticals BIGmbH?</p> <p>15 A. Again, on a global basis Boehringer was</p> <p>16 organized within a business unit framework. So</p> <p>17 as we've talked about a business unit --</p> <p>18 strategic business unit in the United States, you</p> <p>19 can expand that from various operative units</p> <p>20 around the world into the parent company which</p> <p>21 had a head of strategic business unit ethical</p> <p>22 pharmaceuticals.</p>

14 (Pages 50 to 53)

<p style="text-align: right;">50</p> <p>1 Q. If you'd turn to page two.</p> <p>2 A. Yeah.</p> <p>3 Q. The first paragraph. The first</p> <p>4 sentence says, In order to create a unified</p> <p>5 management for our ethical pharmaceutical</p> <p>6 business in the U.S, Edward Tupa, vice president</p> <p>7 sales and marketing, Roxane Laboratories, and</p> <p>8 Fred Duy -- Is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. -- vice president business planning and</p> <p>11 development also of Roxane Laboratories will</p> <p>12 report to Shelly.</p> <p>13 A. Will report functionally to Shelly.</p> <p>14 Q. Will report functionally to Shelly.</p> <p>15 Thank you.</p> <p>16 A. Key word.</p> <p>17 Q. Who is Mr. Tupa?</p> <p>18 A. Mr. Tupa worked within the Roxane</p> <p>19 business entity.</p> <p>20 Q. Do you know what his responsibilities</p> <p>21 were at Roxane?</p> <p>22 A. Responsible as it says here for sales</p>	<p style="text-align: right;">52</p> <p>1 development. So really looking at opportunities</p> <p>2 for new business within the Roxane business</p> <p>3 entity.</p> <p>4 Q. The employee bulletin states that you</p> <p>5 were the executive vice president of BIPI.</p> <p>6 A. Correct.</p> <p>7 Q. And it also says that you were a vice</p> <p>8 president of BIC; is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. How were these -- Were there different</p> <p>11 job responsibilities as executive vice president</p> <p>12 of BIPI and vice president of BIC, or were they</p> <p>13 the same type of responsibilities?</p> <p>14 MR. GASTWIRTH: Objection to form.</p> <p>15 THE DEPONENT: Again, my primary</p> <p>16 responsibility was within BIPI. You know, and</p> <p>17 again, I reemphasize that it was directed towards</p> <p>18 growing the branded business within BIPI.</p> <p>19 BIC really -- I would define it as a</p> <p>20 holding company. And I was an officer within</p> <p>21 BIC, but BIC really didn't have a direct</p> <p>22 business, as we've talked about before.</p>
<p style="text-align: right;">51</p> <p>1 and marketing of Roxane products.</p> <p>2 Q. Would that include multi-source</p> <p>3 products?</p> <p>4 A. Yes.</p> <p>5 Q. Would it include branded generic</p> <p>6 products?</p> <p>7 A. Yes.</p> <p>8 Q. What does it mean that Mr. Tupa</p> <p>9 reported functionally to you?</p> <p>10 A. Basically that means there was a dotted</p> <p>11 line responsibility to me and a direct report and</p> <p>12 responsibility to the president of Roxane</p> <p>13 Laboratories.</p> <p>14 Q. A dotted line responsibility. Can you</p> <p>15 explain what that means.</p> <p>16 A. Again, I go back to what I've said</p> <p>17 before. I really had a strategic involvement</p> <p>18 with Roxane, not an operational day-to-day</p> <p>19 involvement.</p> <p>20 Q. And Fred Duy, can you tell me a little</p> <p>21 bit more about his responsibilities.</p> <p>22 A. Basically, as it says here, business</p>	<p style="text-align: right;">53</p> <p>1 BY MR. FAUCI:</p> <p>2 Q. Were you an officer at any other -- any</p> <p>3 other Boehringer Ingelheim companies besides BIPI</p> <p>4 and BIC?</p> <p>5 MR. GASTWIRTH: Objection to form.</p> <p>6 THE DEPONENT: No.</p> <p>7 BY MR. FAUCI:</p> <p>8 Q. Which company paid your salary?</p> <p>9 A. I believe it was BIPI that paid my</p> <p>10 salary.</p> <p>11 Q. Did you receive a salary from BIC?</p> <p>12 A. No.</p> <p>13 Q. Did you sit on any boards of directors</p> <p>14 for Boehringer Ingelheim companies?</p> <p>15 MR. GASTWIRTH: Objection to form.</p> <p>16 THE DEPONENT: The only board -- The</p> <p>17 only direct position I believe I had was with --</p> <p>18 was with Roxane Laboratories.</p> <p>19 BY MR. FAUCI:</p> <p>20 Q. Do you know approximately how long you</p> <p>21 served on the Roxane board?</p> <p>22 A. Off the top of my head I can't</p>

15 (Pages 54 to 57)

<p style="text-align: right;">54</p> <p>1 remember. It may be a few years, but I can't 2 remember specifically. 3 Q. Do you remember anyone else who served 4 on the board? 5 A. Of? 6 Q. Of Roxane. 7 A. Certainly Mr. Gerstenberg. 8 Q. Can you remember anyone else? 9 A. I'm not -- Again, it was not an active 10 board per se. I think it was more of a legal -- 11 legal entity. 12 Q. What do you mean it wasn't an active 13 board? 14 A. There -- Again, very -- You know, it's 15 a number of years ago, so it's hard for me to 16 remember, but as far as I remember there were 17 very, very infrequent meetings and it was more to 18 form than anything else. It wasn't operational 19 in other words. 20 Q. Do you recall any meetings of the 21 Roxane board of directors? 22 A. Not specific.</p>	<p style="text-align: right;">56</p> <p>1 board meetings, did any of your -- At any of the 2 points in time when you were at the meeting do 3 you have any recollection as to whether or not 4 Roxane business was ever discussed? 5 MR. GASTWIRTH: Objection to form. 6 THE DEPONENT: Yes, I do. Again, on 7 occasion if it was a topic on the agenda. 8 BY MR. FAUCI: 9 Q. Thank you. 10 I'm going to show you what the court 11 reporter has marked as Exhibit I believe 4. 12 (Exhibit Berkle 004 was marked.) 13 BY MR. FAUCI: 14 Q. Please take a minute to look at this 15 document. Feel free to read it, but I'll tell 16 you in advance I'm only going to be asking you 17 questions about a narrow subsection of it. So -- 18 A. Sure. 19 Q. -- you can look at it with that in mind 20 and read it more if you need to later I guess. 21 The page I'm going to be asking you 22 questions about is marked BIC Juris 0236 on the</p>
<p style="text-align: right;">55</p> <p>1 Q. And did you serve on any other boards 2 for Boehringer Ingelheim companies beyond Roxane? 3 A. No. 4 Q. Do you know if BIC and/or BIPI had 5 boards of directors? 6 A. Yes, they did. 7 Q. Did you ever attend meetings of the BIC 8 and BIPI boards of directors? 9 MR. GASTWIRTH: Objection to form. 10 THE DEPONENT: Usually only partly 11 during the times when the human pharmaceutical 12 business would have been discussed, but not as a 13 -- not normally for the whole complete meeting. 14 BY MR. FAUCI: 15 Q. I'm going to -- When you did attend a 16 BIC and/or BIPI board meeting, would Roxane 17 business be discussed? 18 A. Again, you know, there was always an 19 agenda set. So it may have been on occasion, 20 but, you know, I can't specifically say yes or no 21 as I wasn't a board member, so... 22 Q. But when you presented or talked at the</p>	<p style="text-align: right;">57</p> <p>1 bottom right-hand corner. 2 Do you recognize this document? 3 A. Not specifically. 4 Q. Do you see on the first page it says, 5 Minutes of the meeting of board of directors, 6 Boehringer Ingelheim Corporation, October 28, 7 1998? 8 A. Yes, I do. 9 Q. I'm going to direct your attention to 10 BIC Juris 0236. 11 A. Okay. 12 Q. Can you please read the first sentence 13 from the paragraph starting, Mr. Berkle. 14 A. Mr. Berkle explained the reorganization 15 of the strategetic business unit ethical 16 pharmaceuticals advising that it now has two 17 components, one being generic drugs and the other 18 branded generic drugs. 19 Q. Do you agree that the strategic 20 business unit ethical pharmaceuticals had two 21 components, one being generic drugs and the other 22 branded generic drugs?</p>

16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 A. I -- A slight variation of that. I</p> <p>2 think this refers to the Roxane component of the</p> <p>3 strategic business unit. It doesn't refer to the</p> <p>4 BIPI component, which is purely branded.</p> <p>5 Q. So there was --</p> <p>6 A. Really three.</p> <p>7 Q. I'm sorry. What do you mean by really</p> <p>8 three?</p> <p>9 A. Again, this is -- this refers only to</p> <p>10 Roxane Laboratories.</p> <p>11 Q. Okay.</p> <p>12 A. Okay? That's --</p> <p>13 Q. And so there was a Roxane Laboratories</p> <p>14 component of the business unit?</p> <p>15 A. Yes. According to -- According to this</p> <p>16 anyway definition.</p> <p>17 Q. The third sentence down in the same</p> <p>18 paragraph it says, Sales and marketing for</p> <p>19 branded generics will report to BIPI</p> <p>20 counterparts. Are branded generics, are those</p> <p>21 Roxane products?</p> <p>22 A. Yes, they were.</p>	<p style="text-align: right;">60</p> <p>1 And as I think we talked about</p> <p>2 previously in the document, just slightly above</p> <p>3 that particular line, there's two components of</p> <p>4 the Roxane business, multi-source generic and</p> <p>5 branded generic.</p> <p>6 So for the branded generic products</p> <p>7 there was only a few of them. Those people</p> <p>8 within the Roxane business entity did report</p> <p>9 functionally to designated people within the BIPI</p> <p>10 organization, but the day-to-day operations were</p> <p>11 still conducted by Roxane people.</p> <p>12 Q. Okay. The last sentence of this same</p> <p>13 paragraph reads, The contracting and pricing</p> <p>14 departments will be combined for ROI and BIPI.</p> <p>15 Do you recall if this -- if this happened?</p> <p>16 A. This happened really from the</p> <p>17 administrative perspective, so that there was --</p> <p>18 you know, the actual establishment of pricing or</p> <p>19 contracting was done by individuals within the</p> <p>20 Roxane business entity, but the processing of the</p> <p>21 administration, the submission of prices, were</p> <p>22 done by a central unit within -- within BIPI that</p>
<p style="text-align: right;">59</p> <p>1 Q. Why are Roxane sales and marketing</p> <p>2 reporting to their BIPI counterparts?</p> <p>3 MR. GASTWIRTH: Objection to form.</p> <p>4 That's not what this document says.</p> <p>5 BY MR. FAUCI:</p> <p>6 Q. Well, I can -- Let's just look at the</p> <p>7 sentence. It says, Sales and marketing for</p> <p>8 branded generics will report to BIPI</p> <p>9 counterparts. Can you tell me what -- what you</p> <p>10 think that sentence means?</p> <p>11 A. Well, I can tell you what the situation</p> <p>12 actually was.</p> <p>13 Q. Okay. That's --</p> <p>14 A. Okay. And -- And again, because I</p> <p>15 certainly can't recall having seen this document,</p> <p>16 and I certainly didn't write this document.</p> <p>17 The situation was that there were</p> <p>18 people within the Roxane organization, within the</p> <p>19 Roxane business unit, business entity that had</p> <p>20 responsibility for the day-to-day operations and</p> <p>21 the various functions, including marketing and</p> <p>22 sales.</p>	<p style="text-align: right;">61</p> <p>1 had that responsibility for both BIPI and Roxane.</p> <p>2 Q. Why were they combined in this way?</p> <p>3 A. Again, it was -- it was a synergistic</p> <p>4 decision in the sense of rather than having two</p> <p>5 separate organizations making submissions it made</p> <p>6 sense to -- from an efficiency point of view to</p> <p>7 combine that.</p> <p>8 Q. And submissions to who?</p> <p>9 A. To wherever, you know, pricing or</p> <p>10 contract -- contracts had to be submitted to.</p> <p>11 MR. FAUCI: I think it's a good time</p> <p>12 for a quick break.</p> <p>13 THE DEPONENT: Sure.</p> <p>14 THE VIDEOGRAPHER: It's 9:59. We're</p> <p>15 going off the record.</p> <p>16 (Short break was taken.)</p> <p>17 (Exhibit Berkle 005 was marked.)</p> <p>18 THE VIDEOGRAPHER: It's 10:24. We're</p> <p>19 back on the record.</p> <p>20 BY MR. FAUCI:</p> <p>21 Q. Welcome back, Mr. Berkle.</p> <p>22 A. Thank you.</p>

17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 Q. I'm going to hand you a document that's</p> <p>2 been marked by the court reporter as Exhibit 5.</p> <p>3 Can you take a moment to look at it and I'll have</p> <p>4 a few questions for you.</p> <p>5 MR. GASTWIRTH: I'll just take a copy.</p> <p>6 MR. FAUCI: Oh, I'm sorry.</p> <p>7 MR. GASTWIRTH: That's okay. Thank</p> <p>8 you.</p> <p>9 THE DEPONENT: Okay.</p> <p>10 BY MR. FAUCI:</p> <p>11 Q. Do you recognize this document?</p> <p>12 A. No, I do not.</p> <p>13 Q. Does it appear to be on Roxane</p> <p>14 letterhead?</p> <p>15 A. Yes, it does.</p> <p>16 Q. Do you see that the document is signed</p> <p>17 by Gerald Wojta? Am I pronouncing his name</p> <p>18 correctly?</p> <p>19 A. Wojta.</p> <p>20 Q. Wojta. Do you see that it's signed by</p> <p>21 Mr. Wojta?</p> <p>22 A. Yes, I do.</p>	<p style="text-align: right;">64</p> <p>1 the marketing, sales and business development</p> <p>2 departments at Roxane Laboratories, Inc. and</p> <p>3 Boehringer Ingelheim Pharmaceuticals, Inc.</p> <p>4 Q. Do you recall an internal study</p> <p>5 regarding the organization of the business unit</p> <p>6 in the fall of 1995?</p> <p>7 A. I can't recall specifics of it to be</p> <p>8 honest. I knew there was some -- Certainly I'm</p> <p>9 aware there was something going on, but I can't -</p> <p>10 - you know, I don't remember the specifics per</p> <p>11 se.</p> <p>12 Q. The third paragraph states that the</p> <p>13 Roxane marketing and sales departments will be</p> <p>14 led by Mr. Edward Tupa who currently has this</p> <p>15 responsibility. Ed will also assume</p> <p>16 responsibility for the BU sales training, BU</p> <p>17 trade relations and BU contract functions. What</p> <p>18 is BU sales training?</p> <p>19 A. You know --</p> <p>20 MR. GASTWIRTH: Objection to form.</p> <p>21 THE DEPONENT: You know, BU would stand</p> <p>22 for business unit I -- I think. Again, I don't</p>
<p style="text-align: right;">63</p> <p>1 Q. Who is Mr. Wojta?</p> <p>2 A. Mr. Wojta, as appears below his</p> <p>3 signature, was president of Roxane Laboratories.</p> <p>4 Q. Did he work for other companies in the</p> <p>5 Boehringer Ingelheim family?</p> <p>6 A. No.</p> <p>7 Q. Do you -- It says this letter, the</p> <p>8 first thing which appears under the date is dear</p> <p>9 fellow employees. Do you suspect this letter --</p> <p>10 Would this letter have gone out to Roxane</p> <p>11 employees?</p> <p>12 MR. GASTWIRTH: Objection to form.</p> <p>13 THE DEPONENT: Again, I -- you know, I</p> <p>14 don't know for sure, but I would assume that's</p> <p>15 probably where it went.</p> <p>16 BY MR. FAUCI:</p> <p>17 Q. Can you read the first sentence</p> <p>18 beginning with the word "following."</p> <p>19 A. Following an internal study which we</p> <p>20 began last fall of the U.S. business unit ethical</p> <p>21 pharmaceuticals we are now prepared to implement</p> <p>22 plans for a restructured business unit, including</p>	<p style="text-align: right;">65</p> <p>1 recall, you know, this particular memo. These</p> <p>2 functional responsibilities, sales training trade</p> <p>3 relations, really would refer to those functions</p> <p>4 within the Roxane organization.</p> <p>5 BY MR. FAUCI:</p> <p>6 Q. Did the BU have a -- a single sales</p> <p>7 training staff that was responsible for both BIPI</p> <p>8 and Roxane?</p> <p>9 A. No.</p> <p>10 Q. And so BU trade relations, can you --</p> <p>11 can you tell me what that means?</p> <p>12 A. Again, you know, I -- I can't say for</p> <p>13 sure, but I believe that really this is an error,</p> <p>14 because the trade relations -- as I said before,</p> <p>15 trade relations, sales training and contracts,</p> <p>16 this really would refer to those functions within</p> <p>17 the Roxane organization only; therefore, really</p> <p>18 the BU is an incorrect designation from my</p> <p>19 perspective.</p> <p>20 MR. GASTWIRTH: And I'm just going to</p> <p>21 object on the record to the extent that you're</p> <p>22 asking this witness questions about a document</p>

20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 MR. GASTWIRTH: I'm -- And just to</p> <p>2 respond to that commentary by counsel, I'm not</p> <p>3 instructing the witness not to answer these</p> <p>4 questions, I'm just objecting to the extent that</p> <p>5 questions are being asked about documents that</p> <p>6 were not provided to the witness about his</p> <p>7 understanding of terms or phrases within</p> <p>8 documents he's never seen before.</p> <p>9 MR. BREEN: You're giving this witness</p> <p>10 the answer. It's improper and I object to it.</p> <p>11 MR. GASTWIRTH: Okay.</p> <p>12 THE DEPONENT: Could you repeat the</p> <p>13 question.</p> <p>14 BY MR. FAUCI:</p> <p>15 Q. Sure. The language I read, the bolded</p> <p>16 language in paragraph three --</p> <p>17 A. Uh-huh. Right.</p> <p>18 Q. -- does that language -- do you</p> <p>19 understand -- can you tell me what you understand</p> <p>20 that language to mean?</p> <p>21 A. Yeah. How do I -- How do I answer</p> <p>22 that? You know, I read it. I under -- you know,</p>	<p style="text-align: right;">76</p> <p>1 made a larger profit margin when he or she</p> <p>2 dispensed a Roxane product?</p> <p>3 MR. GASTWIRTH: Objection to form.</p> <p>4 THE DEPONENT: As I said before, I was</p> <p>5 not involved in the day-to-day operations of</p> <p>6 Roxane or in basically how they set their prices</p> <p>7 in general or how they marketed their generic</p> <p>8 drugs. I really did not get involved. So I am</p> <p>9 not aware whether they did or didn't do the type</p> <p>10 of thing that you said.</p> <p>11 BY MR. FAUCI:</p> <p>12 Q. And I'll ask a similar question. Do</p> <p>13 you recall if Roxane ever promoted the profit</p> <p>14 margin available on its products as a reason for</p> <p>15 a pharmacist to dispense the product?</p> <p>16 MR. GASTWIRTH: Objection.</p> <p>17 THE DEPONENT: I'm not aware of that.</p> <p>18 BY MR. FAUCI:</p> <p>19 Q. Are you familiar with the</p> <p>20 pharmaceutical product known as Ipratropium</p> <p>21 Bromide?</p> <p>22 A. Yes, I am.</p>
<p style="text-align: right;">75</p> <p>1 based on what it says here -- You know, I'm just</p> <p>2 going to repeat what it says. It says that the -</p> <p>3 - a pharmacy is reimbursed by the payer on a</p> <p>4 formula AWP less a defined percentage plus a</p> <p>5 dispensing fee. So ultimately the money that</p> <p>6 goes to the pharmacy.</p> <p>7 Now, other than reading it and taking</p> <p>8 it exactly what it says, I don't know whether</p> <p>9 it's right or wrong or -- you know, I certainly</p> <p>10 don't offer any other opinion beyond what the</p> <p>11 actual words say.</p> <p>12 Q. Did Roxane ever set AWP's for its</p> <p>13 products to ensure that a pharmacist made a</p> <p>14 larger profit margin when he or she dispensed the</p> <p>15 Roxane product?</p> <p>16 MR. GASTWIRTH: Objection. Can I hear</p> <p>17 that question back for a second, please.</p> <p>18 THE COURT REPORTER: Actually, Counsel,</p> <p>19 can you repeat that.</p> <p>20 BY MR. FAUCI:</p> <p>21 Q. Sure. Do you know if Roxane ever set</p> <p>22 AWP's for its products to ensure that a pharmacist</p>	<p style="text-align: right;">77</p> <p>1 Q. What is that?</p> <p>2 A. Ipratropium Bromide is a human</p> <p>3 pharmaceutical product that was originated within</p> <p>4 Boehringer research and marketed as an original</p> <p>5 brand named Atrovent marketed by BIPI in the</p> <p>6 United States. It is used in the treatment of</p> <p>7 chronic obstructive lung disease.</p> <p>8 Q. Is Atrovent a BIPI product?</p> <p>9 A. Yes, it is.</p> <p>10 Q. And is it fair to characterize Atrovent</p> <p>11 as a branded product?</p> <p>12 A. Yes, it is.</p> <p>13 Q. And Ipratropium Bromide, is it fair to</p> <p>14 say that's a generic equivalent of Atrovent?</p> <p>15 A. Yes, it is.</p> <p>16 Q. Were you involved in any way in making</p> <p>17 decisions about the marketing or pricing of</p> <p>18 Ipratropium Bromide?</p> <p>19 MR. GASTWIRTH: Objection to form.</p> <p>20 THE DEPONENT: You're talking about the</p> <p>21 generic version?</p> <p>22 BY MR. FAUCI:</p>

21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 Q. Yes. When I -- When I refer to</p> <p>2 Ipratropium Bromide, I'll be referring to the</p> <p>3 generic version.</p> <p>4 A. Yeah. I was not involved in the</p> <p>5 marketing or pricing of Ipratropium Bromide.</p> <p>6 Q. Did you have any involvement at all</p> <p>7 with Ipratropium Bromide?</p> <p>8 A. Yes, I did. In the sense that we were</p> <p>9 sister companies and there was discussions</p> <p>10 between the two companies relative to the</p> <p>11 experience that BIPI had in the marketing with</p> <p>12 Atrovent.</p> <p>13 Q. Was there any coordination between the</p> <p>14 marketing of Atrovent and Ipratropium Bromide?</p> <p>15 MR. GASTWIRTH: Objection to form.</p> <p>16 THE DEPONENT: Define coordination.</p> <p>17 BY MR. FAUCI:</p> <p>18 Q. Was there any -- Was there any link how</p> <p>19 Atrovent was marketed and Ipratropium was</p> <p>20 marketed?</p> <p>21 MR. GASTWIRTH: Objection to form.</p> <p>22 THE DEPONENT: Not -- Not in terms of</p>	<p style="text-align: right;">80</p> <p>1 signature block?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Who is Dave Townley?</p> <p>4 A. David worked in the parent company in</p> <p>5 Germany.</p> <p>6 Q. Which company?</p> <p>7 A. BIGmbH.</p> <p>8 Q. Who is Ian Mills?</p> <p>9 A. Ian Mills worked within BIPI. He was</p> <p>10 vice president of marketing and sales reporting</p> <p>11 to me.</p> <p>12 Q. And the other two recipients we've</p> <p>13 talked about before. Mr. Tupa, who is he?</p> <p>14 A. Ed was head of marketing sales within</p> <p>15 the Roxane organization.</p> <p>16 Q. If you look at the first bullet point</p> <p>17 it says Atrovent UDV exclusively expires 30/9/96.</p> <p>18 What is UDV?</p> <p>19 A. Unit dose vials.</p> <p>20 Q. And Atrovent exclusively, that means</p> <p>21 the patent was expiring?</p> <p>22 A. Correct.</p>
<p style="text-align: right;">79</p> <p>1 how they were marketed. The only discussion was</p> <p>2 that, you know -- when Atrovent was approaching</p> <p>3 the end of its patent term, there was discussion</p> <p>4 with the sister company Roxane in terms of their</p> <p>5 launching of a generic version of Atrovent.</p> <p>6 BY MR. FAUCI:</p> <p>7 Q. I'm going to show you a document the</p> <p>8 court reporter marked as Exhibit 7.</p> <p>9 (Exhibit Berkle 007 was marked.)</p> <p>10 BY MR. FAUCI:</p> <p>11 Q. Take a moment to familiarize yourself</p> <p>12 with it.</p> <p>13 A. Sure.</p> <p>14 Okay.</p> <p>15 Q. Do you recognize this document?</p> <p>16 A. Not specifically.</p> <p>17 Q. Do you see on the second page that</p> <p>18 you're copied on this document along with D.</p> <p>19 Marshall and N. Valentin?</p> <p>20 A. Yes, I do.</p> <p>21 Q. It appears this document was authored</p> <p>22 by Dave Townley. Do you see his name in the</p>	<p style="text-align: right;">81</p> <p>1 Q. And it was going to be subject to</p> <p>2 generic competition?</p> <p>3 A. Correct.</p> <p>4 Q. Further down the document says Roxane</p> <p>5 will launch preemptive, unbranded Ipratropium</p> <p>6 Bromide UDV 1/7/96.</p> <p>7 Was the launch of Ipratropium Bromide</p> <p>8 timed to coincide with the expiration of</p> <p>9 exclusivity for Atrovent?</p> <p>10 MR. GASTWIRTH: Objection to form.</p> <p>11 THE DEPONENT: Again, this is a memo.</p> <p>12 You know, obviously I don't remember specifics to</p> <p>13 this memo. So the concept of launching</p> <p>14 preemptively is correct. The timing I'm not sure</p> <p>15 of.</p> <p>16 BY MR. FAUCI:</p> <p>17 Q. What does it mean to launch</p> <p>18 preemptively?</p> <p>19 A. Again, and I think some of these points</p> <p>20 are made in this memo, it was anticipated that</p> <p>21 multiple companies would be ultimately launching</p> <p>22 generic versions of Ipratropium Bromide UDV's.</p>

22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 And the thought process was that Roxane as a</p> <p>2 sister company to Boehringer would, in fact, also</p> <p>3 market sell their generic version of Ipratropium,</p> <p>4 and that strategically we would have Roxane</p> <p>5 launch their generic version onto the market</p> <p>6 prior to other companies being able to come onto</p> <p>7 the marketplace. So that was reference to the</p> <p>8 preemptive.</p> <p>9 Q. Who is Dey Labs?</p> <p>10 A. Dey Labs was a competitive company</p> <p>11 within the generic marketplace.</p> <p>12 Q. Were they a competitor of Roxane?</p> <p>13 A. Yes, they were.</p> <p>14 Q. Did they compete with BIPI?</p> <p>15 A. Not -- Not -- No. They did not have</p> <p>16 drugs that competed that -- that point</p> <p>17 specifically with BIPI.</p> <p>18 Q. It says the fourth bullet point down,</p> <p>19 Dey will be able to offer a full UDV package from</p> <p>20 this date, i.e, IPBr plus Albuterol plus</p> <p>21 Cromoglycate. What are those products?</p> <p>22 A. Well, IPBr is Ipratropium. And the</p>	<p style="text-align: right;">84</p> <p>1 is that Roxane, as other generic companies, their</p> <p>2 goal was to have a breadth of product offers</p> <p>3 within any therapeutic area.</p> <p>4 So ultimately Roxane was hoping to</p> <p>5 launch not only Iprop -- Ipratropium, but other</p> <p>6 respiratory products, such as Albuterol, such as</p> <p>7 Cromoglycate.</p> <p>8 Q. Why were they looking to launch other</p> <p>9 respiratory products?</p> <p>10 A. Well, again, just, you know, trying to</p> <p>11 cover the gambit of therapeutic treatments for</p> <p>12 these diseases and, therefore -- you know,</p> <p>13 basically building their business.</p> <p>14 Q. Would it be an advantage in their</p> <p>15 marketing of Ipratropium Bromide if they had</p> <p>16 other respiratory products available?</p> <p>17 MR. GASTWIRTH: Objection to form.</p> <p>18 THE DEPONENT: I -- You know, I really</p> <p>19 can't say that. I don't know.</p> <p>20 BY MR. FAUCI:</p> <p>21 Q. Why are you copied on this e-mail?</p> <p>22 A. Why am I copied on this e-mail?</p>
<p style="text-align: right;">83</p> <p>1 Albuterol and Cromoglycate are other respirat --</p> <p>2 products used in the treatment of respiratory</p> <p>3 disease.</p> <p>4 Q. Would it be advantageous today that</p> <p>5 they had other products, other respiratory</p> <p>6 products in addition to Ipratropium?</p> <p>7 MR. GASTWIRTH: Objection to form.</p> <p>8 THE DEPONENT: You'd have to ask Dey</p> <p>9 Labs that.</p> <p>10 BY MR. FAUCI:</p> <p>11 Q. The next -- The next bullet point down</p> <p>12 it says, Roxane Albuterol and Cromoglycate UDV</p> <p>13 developments cannot be introduced until Q3/98,</p> <p>14 thus leaving a two-year, quote, gap, quote, where</p> <p>15 only IPBr, Ipratropium, unit dose vials can be</p> <p>16 offered.</p> <p>17 Was it a concern of yours that Roxane</p> <p>18 did not have Albuterol and Cromoglycate UDV</p> <p>19 products for a two-year gap?</p> <p>20 A. Was it a concern of mine? I think --</p> <p>21 You know, I could only reference this memo, which</p> <p>22 is not my memo, which -- basically what it means</p>	<p style="text-align: right;">85</p> <p>1 Because basically I was heading the</p> <p>2 pharmaceutical business.</p> <p>3 Q. The pharmaceutical business for who?</p> <p>4 A. For BIPI with a strategic involvement</p> <p>5 for Roxane, and again BIPI not only -- one of the</p> <p>6 leading therapeutic areas of Boehringer worldwide</p> <p>7 was respiratory disease.</p> <p>8 Q. Was this memo confidential?</p> <p>9 A. To whom?</p> <p>10 Q. To people outside of BIPI and Roxane.</p> <p>11 Was it expected that this memo would stay within</p> <p>12 those two companies?</p> <p>13 A. I don't think there's any huge</p> <p>14 confidentiality to it. I think it was intended</p> <p>15 for those people in the business unit who were</p> <p>16 involved with marketing of respiratory drugs.</p> <p>17 So, you know, I don't know if it would be of</p> <p>18 interest to anybody else.</p> <p>19 MR. GASTWIRTH: I'll just state on the</p> <p>20 record that the document appears to have been</p> <p>21 Bates labeled confidential attorneys' eyes only.</p> <p>22 So with respect to having this document produced</p>

32 (Pages 122 to 125)

<p style="text-align: right;">122</p> <p>1 A. No.</p> <p>2 Q. Who -- Have you seen this document?</p> <p>3 A. I can't recall.</p> <p>4 Q. Do you have any reason to believe that</p> <p>5 you didn't see it?</p> <p>6 A. I can't answer that yes or no.</p> <p>7 Q. Is it -- This is a marketing plan for</p> <p>8 Ipratropium Bromide; is that correct?</p> <p>9 A. It appears to be.</p> <p>10 Q. Is it likely you would have been sent a</p> <p>11 copy of a document like that?</p> <p>12 MR. GASTWIRTH: Objection to form.</p> <p>13 THE DEPONENT: It's possible.</p> <p>14 BY MR. FAUCI:</p> <p>15 Q. I'm going to direct your attention to</p> <p>16 page five. It's the internal page numbers.</p> <p>17 There's a bunch of Bates numbers below, but --</p> <p>18 A. Right. Yeah.</p> <p>19 Q. It says pricing. Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Can you read me the first two</p> <p>22 sentences.</p>	<p style="text-align: right;">124</p> <p>1 is to create an attractive spread between WAC and</p> <p>2 AWP encouraging accounts to convert from the</p> <p>3 brand name to the generic product as quickly as</p> <p>4 possible.</p> <p>5 Do you have any reason to dispute that</p> <p>6 the purpose of the pricing structure was as it is</p> <p>7 stated in the marketing plan; i.e., to create an</p> <p>8 attractive spread between the WAC and AWP</p> <p>9 encouraging accounts to convert from the brand</p> <p>10 name to the generic product as quickly as</p> <p>11 possible?</p> <p>12 MR. GASTWIRTH: Objection to form.</p> <p>13 THE DEPONENT: Yeah. The only comment</p> <p>14 I'll make to that is that, you know, certainly my</p> <p>15 understanding was -- on pricing for Roxane was to</p> <p>16 ensure that they were competitive. Beyond that</p> <p>17 I'm not prepared to make any comments.</p> <p>18 BY MR. FAUCI:</p> <p>19 Q. Would you have approved of this plan</p> <p>20 had you seen that the stated reason for the</p> <p>21 pricing structure was to create an attractive</p> <p>22 spread between WAC and AWP?</p>
<p style="text-align: right;">123</p> <p>1 A. Under pricing?</p> <p>2 Q. Yes.</p> <p>3 A. Pricing of the IB UDV will need to</p> <p>4 follow the traditional parameters of a generic</p> <p>5 product. Specifically AWP will be brand less 10</p> <p>6 percent or \$44.06 for the 25-count package. WAC</p> <p>7 will be AWP less 40 percent or \$26.44 for the 25-</p> <p>8 count package.</p> <p>9 Q. Is that -- Is it your under -- In your</p> <p>10 understanding is it typical that the AWP for a</p> <p>11 generic product would be AW -- would be brand</p> <p>12 less 10 percent?</p> <p>13 MR. GASTWIRTH: Objection to form.</p> <p>14 THE DEPONENT: Again, my familiarity</p> <p>15 was primarily with the branded products where we</p> <p>16 set a wholesale acquisition cost and that I</p> <p>17 cannot tell you what precisely is common relative</p> <p>18 to AWP which from my perspective was familiar --</p> <p>19 was more associated with generic drugs.</p> <p>20 BY MR. FAUCI:</p> <p>21 Q. The next sentence, The reason this type</p> <p>22 of price structure is used for a generic launch</p>	<p style="text-align: right;">125</p> <p>1 MR. GASTWIRTH: Objection to form.</p> <p>2 THE DEPONENT: I'm not going to</p> <p>3 speculate on that. In general I've said to you</p> <p>4 before that I really did not get involved in the</p> <p>5 details of pricing for the generic products</p> <p>6 within the Roxane line.</p> <p>7 BY MR. FAUCI:</p> <p>8 Q. I think we're going to move on from</p> <p>9 that document.</p> <p>10 A. Okay.</p> <p>11 MR. FAUCI: It is 11:57. I'm happy to</p> <p>12 keep going. Lunch isn't here.</p> <p>13 MR. GASTWIRTH: That would be fine.</p> <p>14 MR. FAUCI: Stop whenever people are</p> <p>15 ready.</p> <p>16 BY MR. FAUCI:</p> <p>17 Q. I'm going to show you a document the</p> <p>18 court reporter will mark as Exhibit 15.</p> <p>19 (Exhibit Berkle 015 was marked.)</p> <p>20 BY MR. FAUCI:</p> <p>21 Q. Please take a moment.</p> <p>22 A. Okay.</p>

33 (Pages 126 to 129)

<p style="text-align: right;">126</p> <p>1 Q. Have you seen this document?</p> <p>2 A. I don't recall.</p> <p>3 Q. It looks like an early version of an e-</p> <p>4 mail.</p> <p>5 A. You're right.</p> <p>6 Q. It seems to be from Jim King. Regards,</p> <p>7 Jim King. Do you see that at the bottom?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Who's Jim king?</p> <p>10 A. Jim King was vice president of sales</p> <p>11 reporting to me.</p> <p>12 Q. For BIPI?</p> <p>13 A. For BIPI. For BIPI, sorry.</p> <p>14 Q. Did he have responsibility for Roxane</p> <p>15 as well?</p> <p>16 A. No, he did not.</p> <p>17 Q. In the "to" line it's to a bunch of</p> <p>18 different groups it seems; all RDs. What does</p> <p>19 that mean?</p> <p>20 A. Regional directors that would have been</p> <p>21 reporting directly to Jim King.</p> <p>22 Q. Would they be in the trade relations</p>	<p style="text-align: right;">128</p> <p>1 see that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. I'm going to look at the second</p> <p>4 paragraph.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Just so you are clear on sales</p> <p>7 commissions, if Roxane's Ipratropium Bromide is</p> <p>8 sold or if an Atrovent solution is sold, you get</p> <p>9 credit for it. It is in the corporation's best</p> <p>10 interest to shift business to Roxane as quickly</p> <p>11 as possible.</p> <p>12 Did sales personnel -- BIPI sales</p> <p>13 personnel get credit for sales whether or not</p> <p>14 they were BIPI products or Roxane products?</p> <p>15 MR. GASTWIRTH: Objection to form.</p> <p>16 THE DEPONENT: I can only --</p> <p>17 BY MR. FAUCI:</p> <p>18 Q. Go ahead.</p> <p>19 A. I can only say according to this they</p> <p>20 did.</p> <p>21 Q. Do you have any reason to believe they</p> <p>22 didn't?</p>
<p style="text-align: right;">127</p> <p>1 group?</p> <p>2 A. No.</p> <p>3 Q. What -- What group would they be in?</p> <p>4 Where do they fall in the company?</p> <p>5 A. What's called the sales group.</p> <p>6 Basically responsible for medical representatives</p> <p>7 calling on physicians.</p> <p>8 Q. And those people, would they be BIPI</p> <p>9 employees?</p> <p>10 A. Yes, they would.</p> <p>11 Q. And they would be responsible just for</p> <p>12 BIPI products?</p> <p>13 A. Yes.</p> <p>14 Q. What about DMs?</p> <p>15 A. DM stands for direct managers and they</p> <p>16 report to the regional directors.</p> <p>17 Q. And then reps?</p> <p>18 A. Reps are individual sales reps</p> <p>19 reporting to the DMs.</p> <p>20 Q. And all these people are BIPI?</p> <p>21 A. Yes, they are.</p> <p>22 Q. Subject, Atrovent IB solution. Do you</p>	<p style="text-align: right;">129</p> <p>1 A. No, I don't.</p> <p>2 Q. Had you seen this e-mail or known of</p> <p>3 this, would you have approved of BIPI people</p> <p>4 getting credit for Roxane sales?</p> <p>5 A. I would have been aware of it and I</p> <p>6 would have approved it.</p> <p>7 Q. You would have approved it?</p> <p>8 A. Yeah. The reason being is that -- and</p> <p>9 again, I'm making certain assumptions here, that</p> <p>10 this was during only -- this was only for a</p> <p>11 period of time. Okay. And this was the period</p> <p>12 of time when Roxane was preemptively launching</p> <p>13 Ipratropium Bromide.</p> <p>14 Okay. So the agreement was that</p> <p>15 Boehringer medical reps would still be promoting</p> <p>16 the compound to physicians and to hospital</p> <p>17 physicians, therefore, trying to grow the market</p> <p>18 penetration of Ipratropium within the respiratory</p> <p>19 marketplace.</p> <p>20 And because they were putting an effort</p> <p>21 but allowing -- but allowing Roxane to sell a</p> <p>22 generic version during that exclusive period that</p>

47 (Pages 182 to 185)

<p style="text-align: right;">182</p> <p>1 BY MR. FAUCI:</p> <p>2 Q. Who was that? Do you recall who the</p> <p>3 CFO was?</p> <p>4 A. At that -- I don't know what -- What's</p> <p>5 the date here?</p> <p>6 Q. I think the date is around the 1998</p> <p>7 time frame. Signed 8/25/98.</p> <p>8 A. Probably Holger Huels.</p> <p>9 Q. And just for the record it was signed</p> <p>10 by the wholesaler on 8/25/98 and by Roxane Labs</p> <p>11 on 10/28/98.</p> <p>12 A. Gotcha.</p> <p>13 Q. Moving on. I'm going to mark as</p> <p>14 Exhibit 26 -- I shouldn't do that, let the court</p> <p>15 reporter do that.</p> <p>16 (Exhibit Berkle 026 was marked.)</p> <p>17 MR. FAUCI: Just so counsel for the</p> <p>18 Defendant knows, this is an amended notice of</p> <p>19 deposition.</p> <p>20 BY MR. FAUCI:</p> <p>21 Q. Have you ever seen this document? Feel</p> <p>22 free to read it.</p>	<p style="text-align: right;">184</p> <p>1 MR. GASTWIRTH: Objection to form.</p> <p>2 THE DEPONENT: The Texas case was after</p> <p>3 I had retired from BIPI.</p> <p>4 BY MR. FAUCI:</p> <p>5 Q. When you left, were you -- That's fine.</p> <p>6 The question is, when you left, did anybody tell</p> <p>7 you that you should look through your documents</p> <p>8 and set aside certain documents?</p> <p>9 A. No.</p> <p>10 MR. GASTWIRTH: Objection to form.</p> <p>11 BY MR. FAUCI:</p> <p>12 Q. What number was that, 26?</p> <p>13 A. 26, yeah.</p> <p>14 Q. I'm going to show you a document which</p> <p>15 the court reporter will mark as 27.</p> <p>16 (Exhibit Berkle 027 was marked.)</p> <p>17 BY MR. FAUCI:</p> <p>18 Q. Take a moment to familiarize yourself.</p> <p>19 A. Okay.</p> <p>20 Q. Turning to the second page.</p> <p>21 A. All right.</p> <p>22 Q. Actually just go to the back. There's</p>
<p style="text-align: right;">183</p> <p>1 A. Yes.</p> <p>2 Q. When was the first time?</p> <p>3 A. This is the amended copy?</p> <p>4 Q. Yes. Although I can represent that the</p> <p>5 only change on that from there to the original is</p> <p>6 the location.</p> <p>7 A. So the original was about a week ago.</p> <p>8 Q. Were you asked to look for documents</p> <p>9 prior to this deposition?</p> <p>10 A. Yes, I was.</p> <p>11 Q. Did you find any?</p> <p>12 A. No, I did not.</p> <p>13 Q. Where did you look?</p> <p>14 A. Where did I look? In my home.</p> <p>15 Q. That's good enough.</p> <p>16 A. Yeah.</p> <p>17 Q. When you left BIPI in late 2003, were</p> <p>18 you asked to look for documents or search for e-</p> <p>19 mails in connection with the Texas case that</p> <p>20 we've talked about previously or any other case</p> <p>21 involving allegations about average wholesale</p> <p>22 price?</p>	<p style="text-align: right;">185</p> <p>1 two documents here. There's a cover one.</p> <p>2 A. Yes.</p> <p>3 Q. I'm going to mostly focus on the second</p> <p>4 part of it. Is it fair to say that you drafted</p> <p>5 pages two through four of this?</p> <p>6 A. I'm sorry?</p> <p>7 Q. Is it fair to say that you drafted</p> <p>8 pages two through four of this?</p> <p>9 A. It's got my signature on it so I assume</p> <p>10 that's so.</p> <p>11 Q. Do you recall drafting this?</p> <p>12 A. Not specifically.</p> <p>13 Q. Is this an employee bulletin? Do you</p> <p>14 see that at the top?</p> <p>15 A. Yes.</p> <p>16 Q. Who do you -- Who did you understand</p> <p>17 that this employee bulletin would go to?</p> <p>18 A. I would assume that it was directed</p> <p>19 towards BIPI and Roxane employees.</p> <p>20 Q. I'm going to look at the paragraph</p> <p>21 beginning, As we are all aware. Do you see that?</p> <p>22 A. Yes.</p>

48 (Pages 186 to 189)

<p style="text-align: right;">186</p> <p>1 Q. As we are all aware, we have taken 2 several steps in the past two years to increase 3 the level of business unit collaboration and 4 focus across organizations; e.g., business unit 5 operating committee, ethical pharmaceutical 6 committee. 7 Would you agree that -- Is that your 8 recollection now that over the past two years 9 leading up to 1998 you took several steps to 10 increase the level of business unit 11 collaboration? 12 A. Again, the goal would be to create eff 13 -- efficiencies and synergies where it made 14 sense. However, Roxane and BIPI were always 15 separate entities, they were always separate 16 management within each entity and the day-to-day 17 business for each of those entities was done 18 within that entity. 19 Q. It says, The changes I will describe in 20 this announcement build on this foundation. 21 These changes also are designed to build on the 22 strengths of Boehringer Ingelheim</p>	<p style="text-align: right;">188</p> <p>1 strengthening the synergy between our solid 2 liquid dosage and injectable multi-source 3 businesses. Is that what you talked about 4 earlier with Ben Venue being an injectable 5 company? 6 A. Correct. So the solid liquid dose was 7 -- referred to Roxane and the injectable referred 8 to Ben Venue. 9 Q. It says, I've asked Tom Russillo to 10 take on this critical and complex challenge. 11 Multi-source marketing within RLI, Roxane, now 12 will report to Tom. Who's Tom Russillo? 13 A. Tom Russillo was president of Ben Venue 14 Laboratories and obviously with this change took 15 over responsibility for the multi-source business 16 within Roxane as well. 17 Q. Was Tom Russillo at Ben Venue prior to 18 its acquisition by the Boehringer Ingelheim 19 family? 20 A. Yes, he was. 21 Q. Do you know if Russillo came to work 22 for Roxane?</p>
<p style="text-align: right;">187</p> <p>1 Pharmaceuticals, Inc., BIPI, Roxane Laboratories 2 and Ben Venue Laboratories while achieving much 3 greater synergy across the entire business unit. 4 Do you see that? 5 A. Yes, I do. 6 Q. We've talked about synergy a bit 7 earlier today. What does it mean to increase the 8 synergy across the entire business unit? 9 A. Again, to do away with wasted effort in 10 the sense that you have duplication of -- of 11 effort in various functions. And where it made 12 sense to amalgamate services that were common to 13 the various companies and divisions, then we 14 attempted to do that. But, again, the day-to-day 15 operations for each of those businesses was 16 conducted and carried out by management within 17 those divisions. 18 Q. If you look at the next page, the first 19 bullet point. 20 A. Okay. 21 Q. We want to expand our important multi- 22 source business by capitalizing on and</p>	<p style="text-align: right;">189</p> <p>1 MR. GASTWIRTH: Objection to form. 2 THE DEPONENT: I believe he was a Ben 3 Venue employee, but you would have to check that 4 with people more in the know than I. 5 BY MR. FAUCI: 6 Q. But it's fair to say regardless of who 7 he formally worked for that Roxane employees 8 reported to him? 9 A. Yes. 10 Q. I'm going to look down at another 11 bullet point. It says, To ensure that we are 12 bringing BIPI's medical and drug regulatory 13 affairs' knowledge to bear on both our multi- 14 source and specialty products, Roxane's, or 15 RLI's, medical and drug regulatory affairs' 16 current product will report with Doug Wilson's 17 BIPI medical/DRA organization. What are the 18 medical and drug regulatory affairs departments? 19 A. Again, these are the people within that 20 organization that are responsible for conducting 21 clinical research and for liaising with the FDA. 22 Q. It says that RLI's medical and drug</p>

49 (Pages 190 to 193)

<p style="text-align: right;">190</p> <p>1 regulatory affairs will report within Doug 2 Wilson's BIPI/DRA organization. Why was that? 3 A. Again, in order to create efficiencies. 4 Q. What type of efficiencies could that 5 create? 6 A. BIPI had a large department, you know 7 consisting of many more physicians, 8 statisticians, et cetera. So it would allow 9 Roxane -- people responsible for these areas to 10 tap into the larger BIPI medical regulatory 11 organization. 12 Q. Next bullet point it says, RLI branded 13 and specialty products. Are those branded 14 generics? 15 MR. GASTWIRTH: Objection to form. 16 THE DEPONENT: I assume it's branded 17 generics. 18 BY MR. FAUCI: 19 Q. Our RLI branded and specialty products 20 will become an important component of our 21 national and international business strategy. We 22 want to expand our support to these products by</p>	<p style="text-align: right;">192</p> <p>1 able to allow Roxane to benefit from the 2 expertise within BIPI. 3 But, again, I emphasize that the day- 4 to-day operations were conducted for the Roxane 5 branded products -- branded generic products 6 within the Roxane structure. 7 Q. Next bullet point it says, BIPI and RLI 8 contacting will be combined into a single 9 organization. What are BIPI and RLI contracting? 10 I'm on the next page, I'm sorry, the 11 last bullet point. 12 A. Okay. Again, these are the -- this is 13 the department that would set up contracts with 14 purchasing groups or distributors of the BIPI and 15 Roxane products. 16 Q. What do you mean set up contracts? 17 A. Again, if there was a -- a distribution 18 agreement that was negotiated with a purchasing 19 group or a wholesaler or a -- you know, any other 20 distributor, that a contract would be put 21 together representing the terms of the agreement 22 between the two parties.</p>
<p style="text-align: right;">191</p> <p>1 increasing the degree of collaboration between 2 the marketing of RLI product lines and BIPI 3 product lines. Do you see that? 4 A. Yes, I do. 5 Q. How would increasing the degree of 6 collaboration between Roxane and BIPI marketing 7 be beneficial? 8 A. Again, this was specific to the branded 9 -- RLI branded products. So at that time BIPI of 10 course had a much greater expertise and 11 experience in marketing these types of products. 12 Keep in mind that Roxane was made up of 13 a couple different types of businesses. The 14 multi-source, which was very -- and then they had 15 these so-called branded generics, which they 16 hoped to market more along the lines of a true 17 original brand such as contained in the BIPI 18 product line. 19 And strategically we made the decision, 20 fine, let's see what we could do and it made 21 sense to combine, you know, at certain levels the 22 reporting relationship to add to be able -- to be</p>	<p style="text-align: right;">193</p> <p>1 Q. Next sentence it says, John Powers will 2 lead the day-to-day management of this operation. 3 He did lead the day-to-day management for BIPI 4 and Roxane? 5 MR. GASTWIRTH: Objection to form. 6 THE DEPONENT: You know, I recall that 7 he was predominantly involved on the Roxane's 8 products, but I can't recall specifically beyond 9 that. 10 BY MR. FAUCI: 11 Q. You drafted this document, correct? 12 A. I did. This was also ten years ago. 13 Q. I'm going to ask you to go back to the 14 second page. The first page of this document, 15 second page of the exhibit. 16 A. Right. 17 Q. By the year 2004, very beginning, our 18 ethical pharmaceutical business is expected to 19 generate in the USA more than 40 percent of 20 Boehringer Ingelheim's worldwide ethical 21 pharmaceutical business. I'm just trying to 22 understand what that means. Can you tell me what</p>

55 (Pages 214 to 217)

<p style="text-align: right;">214</p> <p>1 Q. The first page of this is an e-mail.</p> <p>2 It's from Dan Gerrity.</p> <p>3 A. Right.</p> <p>4 Q. It seems to attach a document about the</p> <p>5 pricing policy and procedures. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. It says, Please review the attached</p> <p>8 draft pricing policy and procedure and provide me</p> <p>9 any changes you deem appropriate. Do you see</p> <p>10 that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And this e-mail is dated May 3rd, 2001.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Let's turn to the pricing policy and</p> <p>16 procedure document. It says, Scope, this policy</p> <p>17 is applicable to wholesale acquisition cost,</p> <p>18 average wholesale price, minimum bid price,</p> <p>19 direct price for brand products of Boehringer</p> <p>20 Ingelheim Pharmaceuticals, Inc. and Roxane</p> <p>21 Laboratories.</p> <p>22 I had to adjust my microphone there.</p>	<p style="text-align: right;">216</p> <p>1 brand products; is that correct?</p> <p>2 A. I believe so. And, you know, again my</p> <p>3 memory isn't a hundred percent, but this was in</p> <p>4 May of '01, according to the cover memo -- cover</p> <p>5 e-mail --</p> <p>6 Q. Cover e-mail. Sure.</p> <p>7 A. -- and I believe this was approaching</p> <p>8 the time when we divested of the Roxane branded</p> <p>9 generic line.</p> <p>10 Q. What do you mean you divested of the</p> <p>11 Roxane branded generic line?</p> <p>12 A. The -- Again, if I recall correctly</p> <p>13 Viramune, which was under the Roxane label, was</p> <p>14 transferred to the BIPI label and then the</p> <p>15 palliative care line was in fact divested sold.</p> <p>16 Q. To who?</p> <p>17 A. It was initially sold to Elan who then</p> <p>18 I know in turn sold it somewhere else. So this</p> <p>19 was -- you know, this would have been for a very</p> <p>20 short period of time.</p> <p>21 Q. What was the -- the drug that you said</p> <p>22 was transferred to BIPI?</p>
<p style="text-align: right;">215</p> <p>1 Was there a single policy applicable to those</p> <p>2 prices for brand products of Boehringer Ingelheim</p> <p>3 Pharmaceuticals and Roxane Labs?</p> <p>4 MR. GASTWIRTH: Objection. Form.</p> <p>5 THE DEPONENT: A single policy?</p> <p>6 BY MR. FAUCI:</p> <p>7 Q. Let me rephrase that. It says, This</p> <p>8 policy is applicable to various prices for brand</p> <p>9 products of Boehringer Ingelheim Pharmaceuticals,</p> <p>10 Inc. and Roxane Labs. Do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Does it surprise you that there's a</p> <p>13 document out there that says that there's one --</p> <p>14 that there's a policy that's applicable to prices</p> <p>15 for both companies?</p> <p>16 MR. GASTWIRTH: Objection. Form.</p> <p>17 THE DEPONENT: My understanding of this</p> <p>18 is that it's applicable to the branded products.</p> <p>19 Okay. So BIPI and branded generics of Roxane.</p> <p>20 BY MR. FAUCI:</p> <p>21 Q. So you think this pertains to a pricing</p> <p>22 policy for Roxane's branded generics and BIPI's</p>	<p style="text-align: right;">217</p> <p>1 A. Viramune, which is a drug for treatment</p> <p>2 of AIDS.</p> <p>3 Q. What do you mean it was transferred to</p> <p>4 BIPI?</p> <p>5 A. Well, rather than be sold under the</p> <p>6 Roxane label, it was sold under the BIPI label.</p> <p>7 Q. I'm a neophyte in this --</p> <p>8 A. Right.</p> <p>9 Q. -- so I'm going to ask a question, it</p> <p>10 might be ignorant to you, but for Viramune --</p> <p>11 A. Viramune.</p> <p>12 Q. Viramune, when it was sold under the</p> <p>13 Roxane label did they have any special rights to</p> <p>14 it?</p> <p>15 MR. GASTWIRTH: Objection to the -- to</p> <p>16 the extent that you're asking questions now about</p> <p>17 a drug that's not at issue in the case. I'm just</p> <p>18 going to object on the record.</p> <p>19 MR. FAUCI: Okay.</p> <p>20 THE DEPONENT: Still answer?</p> <p>21 BY MR. FAUCI:</p> <p>22 Q. Please.</p>

57 (Pages 222 to 225)

<p style="text-align: right;">222</p> <p>1 A. Yes, it was.</p> <p>2 Q. And this policy is applicable to</p> <p>3 wholesale acquisition costs and average wholesale</p> <p>4 prices. That's what it says at the top?</p> <p>5 A. Yes.</p> <p>6 Q. When you -- If you were to approve a</p> <p>7 wholesale acquisition cost or an average</p> <p>8 wholesale price, what would be sent to you to</p> <p>9 make the decision on whether or not to approve</p> <p>10 it?</p> <p>11 MR. GASTWIRTH: Objection. Form.</p> <p>12 THE DEPONENT: You know, let me</p> <p>13 reiterate that I can't recall exactly what was</p> <p>14 sent to me. My focus was on WAC. It would have</p> <p>15 been a summary of the information that is listed</p> <p>16 under pricing proposals.</p> <p>17 MR. FAUCI: Can you repeat the answer</p> <p>18 for me.</p> <p>19 (Record was read by the court</p> <p>20 reporter.)</p> <p>21 BY MR. FAUCI:</p> <p>22 Q. What types of information would be</p>	<p style="text-align: right;">224</p> <p>1 Q. Plan changes to prices are extremely</p> <p>2 confidential and should be kept to PTC, pricing</p> <p>3 committee members only. Do you see that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. And would you keep -- if you received</p> <p>6 information in this process on a branded generic</p> <p>7 for Roxane would you agree that plan changes to</p> <p>8 their price would be extremely confidential?</p> <p>9 MR. GASTWIRTH: Objection. Form.</p> <p>10 THE DEPONENT: I -- I would think it</p> <p>11 was because a branded generic there is still</p> <p>12 multi-source products out there and, therefore,</p> <p>13 it be would very critical in terms of making sure</p> <p>14 that competitors weren't aware of the plans that</p> <p>15 were to be put in place regarding pricing.</p> <p>16 MR. FAUCI: We can move on from that</p> <p>17 document.</p> <p>18 MS. ROGERS: Jeff, before you go I just</p> <p>19 want it to be clear on the record, and maybe the</p> <p>20 court reporter could read it back, when he was</p> <p>21 reading that paragraph I think he -- perhaps he</p> <p>22 misspoke. When he read impact on potential</p>
<p style="text-align: right;">223</p> <p>1 listed in a pricing proposal?</p> <p>2 A. I think if you read this, you'll --</p> <p>3 you'll see what it is. You know as much as I do.</p> <p>4 Q. Tell me what you're looking at that --</p> <p>5 What are you looking at?</p> <p>6 A. Well, look under new product pricing</p> <p>7 proposals. You know, competitive situation.</p> <p>8 Q. Why don't you just read that into the</p> <p>9 record then.</p> <p>10 A. Forecasted net sales generated -- And</p> <p>11 again, I would emphasize it's probably a summary,</p> <p>12 it doesn't necessarily include all that</p> <p>13 information. Forecasted net sales generated</p> <p>14 based on proposed price, growth rates, market</p> <p>15 conditions, current and anticipated market share</p> <p>16 of BI competitive products, daily wholesale</p> <p>17 prices of direct competitors, impact on</p> <p>18 competitive position, expected discounts that</p> <p>19 will be given, probable reaction of managed care</p> <p>20 organizations, impact on potential medical</p> <p>21 rebates and any market research that was</p> <p>22 conducted.</p>	<p style="text-align: right;">225</p> <p>1 Medicaid rebates. I thought he said medical</p> <p>2 rebates. Perhaps I misheard. I just want to be</p> <p>3 sure that that's clear. Did anyone hear it?</p> <p>4 Did you read Medicaid rebates? Is that</p> <p>5 what you read?</p> <p>6 THE DEPONENT: You know, I mean, I</p> <p>7 assume I read what it says there, but --</p> <p>8 MS. ROGERS: Okay.</p> <p>9 THE DEPONENT: -- I don't know.</p> <p>10 MR. FAUCI: We'll stipulate that he</p> <p>11 meant to read what it says.</p> <p>12 THE DEPONENT: My intent was to read</p> <p>13 Medicaid.</p> <p>14 MS. ROGERS: Thank you.</p> <p>15 BY MR. FAUCI:</p> <p>16 Q. This document on -- One more thing.</p> <p>17 I'm sorry. I know I told you to put it away, but</p> <p>18 one final question on it. Do you know if this --</p> <p>19 The e-mail says that this was a draft pricing</p> <p>20 policy procedure.</p> <p>21 A. Right.</p> <p>22 Q. Do you know if it was enacted?</p>

58 (Pages 226 to 229)

<p style="text-align: right;">226</p> <p>1 A. I believe it was -- The committee was 2 put in place certainly for BIPI products, but I 3 don't want to say that I'm absolutely sure it was 4 for Roxane only because of what I told you 5 previously. I knew that there were discussions 6 taking place to divest of part of the branded 7 generic line and -- relative to Viramune. So I'm 8 not -- my memory fails me. I'm not a hundred 9 percent sure.</p> <p>10 Q. You can put that aside now for real. 11 A. Okay. 12 Q. Are you familiar with the 13 pharmaceutical product known as Furosemide? 14 A. As an ex-pharmacist, yes. 15 Q. When were you a pharmacist? 16 A. Many years ago. I graduated with a 17 pharmacy degree. I really didn't -- I practiced 18 for an extremely short period of time. 19 Q. What is Furosemide? 20 A. Furosemide is a generic name for a 21 diuretic, a so-called water pill. 22 Q. Was it a BIPI product?</p>	<p style="text-align: right;">228</p> <p>1 Judy Waterer. It says, Attached is a document 2 called standby statement, Furosemide price 3 change. Do you see that? 4 MR. GASTWIRTH: Objection. Form. 5 THE DEPONENT: Yes, I do. 6 MR. GASTWIRTH: I believe you just 7 switched the from and the to. 8 BY MR. FAUCI: 9 Q. Fair enough. The document is from Judy 10 Waterer to Lesli Paoletti. I stand corrected. 11 It says, Here's a shot at it, please 12 make modifications as you see fit, then pass it 13 by Pam Demala. Who's Pam Demala? 14 A. Pam Demala was a BIPI -- either BIPI or 15 BIC employee, I'm not sure, but certainly within 16 the BI side, in the public relations area. 17 Q. Why would a Furosemide price change be 18 passed by Pam Demala? 19 A. I haven't got a clue. 20 Q. And it says that, You may need to call 21 her and let her know the background, she'll 22 probably want to pass it by Berkle and Russillo</p>
<p style="text-align: right;">227</p> <p>1 A. No, it was not. 2 Q. Do you know if it was a Roxane product? 3 A. I think it was within the Roxane multi- 4 source product line. 5 Q. It's not a brand of generic, is it? 6 A. It is not. 7 Q. I'm going to hand you Exhibit Number 8 32. 9 (Exhibit Berkle 032 was marked.) 10 THE DEPONENT: Okay. 11 BY MR. FAUCI: 12 Q. Are you familiar with this document? 13 A. No, I'm not. 14 Q. Who's Judy Waterer again? 15 A. She was a Roxane employee. 16 Q. Do you know who Lesli Paoletti was? 17 A. You know, the name is vaguely familiar, 18 but I couldn't even tell you what position she 19 held. She was a Roxane employee. 20 Q. She was at Roxane? 21 A. Yeah. 22 Q. It's an e-mail from Lesli Paoletti to</p>	<p style="text-align: right;">229</p> <p>1 as well. Any idea why Ms. Waterer would think 2 that Pam Demala would want to pass it by you? 3 A. I don't know. And the only other 4 comment I would make is I'm not sure in the 5 timing but there's somewhere in 2000 that we -- 6 we totally changed the structure of the 7 organization and I really was no longer involved 8 in the Roxane business after that point in time. 9 So I don't know whether this coincides with that 10 time period or not. 11 Q. Do you remember around this time Roxane 12 -- Do you have any knowledge about the fact that 13 around this time Roxane raised the AWP's for its 14 Furosemide products? 15 MR. GASTWIRTH: Objection. Form. I'm 16 sorry. Can I hear that back, please. 17 (Record was read by the court 18 reporter.) 19 MR. FAUCI: I can read it again if 20 you'd like. 21 MR. GASTWIRTH: Thanks. 22 BY MR. FAUCI:</p>

59 (Pages 230 to 233)

<p style="text-align: right;">230</p> <p>1 Q. Do you have any recollection whether</p> <p>2 around the 2000 time frame Roxane raised the AWP</p> <p>3 for its Furosemide products?</p> <p>4 A. I'm not aware.</p> <p>5 Q. We can move on from that document.</p> <p>6 Can we go off the record for two</p> <p>7 minutes.</p> <p>8 THE VIDEOGRAPHER: It's 3:14. We're</p> <p>9 going off the record.</p> <p>10 (Short break was taken.)</p> <p>11 (Exhibit Berkle 033 was marked.)</p> <p>12 THE VIDEOGRAPHER: It's 3:28. We're</p> <p>13 going back on the record.</p> <p>14 BY MR. FAUCI:</p> <p>15 Q. Mr. Berkle, I've handed you what's been</p> <p>16 marked as Exhibit 33.</p> <p>17 A. Yes.</p> <p>18 Q. Can you take a moment to familiarize</p> <p>19 yourself with it.</p> <p>20 A. Okay.</p> <p>21 Q. What's the subject line of this e-mail?</p> <p>22 A. It says Furosemide tablet AWP</p>	<p style="text-align: right;">232</p> <p>1 A. Fred was a Roxane employee.</p> <p>2 Q. And it's sent to you, Shelly Berkle?</p> <p>3 A. Yes, it is.</p> <p>4 Q. Subject, Roxicodone 15/30mg launch</p> <p>5 plan. Do you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. And then does the attachment to this e-</p> <p>8 mail appear to be a launch plan for Roxicodone?</p> <p>9 A. It certainly appears to be at least a</p> <p>10 summary of a launch plan. Highlights.</p> <p>11 Q. Is Roxicodone a Roxane product?</p> <p>12 A. Yes, it was.</p> <p>13 Q. Second sentence of the e-mail, The</p> <p>14 strategy is essentially what you saw in</p> <p>15 Tarrytown. What's Tarrytown?</p> <p>16 A. It's -- Tarrytown is a town in New York</p> <p>17 State close -- just across the border from</p> <p>18 Connecticut.</p> <p>19 Q. What brought you to Tarrytown?</p> <p>20 A. I'm sorry?</p> <p>21 Q. What brought you to Tarrytown?</p> <p>22 A. Well, there's a conference that was</p>
<p style="text-align: right;">231</p> <p>1 adjustment.</p> <p>2 Q. Have you read or seen this before?</p> <p>3 A. No, I have not.</p> <p>4 Q. That's all. We're going to do another</p> <p>5 document.</p> <p>6 (Exhibit Berkle 034 was marked.)</p> <p>7 BY MR. FAUCI:</p> <p>8 Q. The court reporter has handed you</p> <p>9 what's been marked as Exhibit 34. It's a very</p> <p>10 lengthy document. Feel free to read it, but I'm</p> <p>11 going to direct your attention to specific parts</p> <p>12 of it, so just tell me when you feel ready to</p> <p>13 have some questions -- have some questions asked.</p> <p>14 MR. BREEN: Did you already mark this</p> <p>15 one?</p> <p>16 MR. FAUCI: Yep. 34.</p> <p>17 THE DEPONENT: Okay.</p> <p>18 BY MR. FAUCI:</p> <p>19 Q. Do you recognize this document?</p> <p>20 A. Not specifically.</p> <p>21 Q. Look at the first page. It appears to</p> <p>22 be an e-mail from Fred Duy. Who's he?</p>	<p style="text-align: right;">233</p> <p>1 utilized frequently for meetings by -- by the</p> <p>2 BIPI people, BIPI/Roxane people.</p> <p>3 Q. Do you recall -- The strategy is</p> <p>4 essentially what you saw in Tarrytown. Do you</p> <p>5 recall being exposed to strategies relating to a</p> <p>6 launch document in Tarrytown?</p> <p>7 A. I can't -- I can't remember</p> <p>8 specifically that meeting. You know, certainly I</p> <p>9 was at multiple meetings over the years in</p> <p>10 Tarrytown, but I can't remember the details.</p> <p>11 Q. It goes on to say that, It--I think the</p> <p>12 strategy--has been updated and expanded with</p> <p>13 specific tactics by Doug Bierl with input from</p> <p>14 lots of people here and in Ridgefield. Who's</p> <p>15 Doug Bierl?</p> <p>16 A. I haven't got a clue.</p> <p>17 Q. What's Ridgefield?</p> <p>18 A. Ridgefield is the town -- location of</p> <p>19 BI Pharmaceuticals.</p> <p>20 Q. Where was Roxane?</p> <p>21 A. In Columbus, Ohio.</p> <p>22 Q. Ridgefield means BIPI?</p>

60 (Pages 234 to 237)

<p style="text-align: right;">234</p> <p>1 A. It means BIPI, BIC.</p> <p>2 Q. BIC. Why are people in Ridgefield</p> <p>3 updating and expanding a strategy for the launch</p> <p>4 of a Roxane product?</p> <p>5 MR. GASTWIRTH: Objection. Form.</p> <p>6 THE DEPONENT: This goes along with</p> <p>7 some of the memos you've shown me before.</p> <p>8 Roxicodone was a branded generic and, therefore,</p> <p>9 there was some supervisory role that some -- a</p> <p>10 few BIPI people played. But again, the launch</p> <p>11 plan, as you see here, was put together by Roxane</p> <p>12 employees.</p> <p>13 BY MR. FAUCI:</p> <p>14 Q. It says, We expect approval by the user</p> <p>15 fee deadline, August 29th. What does that mean?</p> <p>16 A. I assume that refers to the FDA</p> <p>17 approval.</p> <p>18 Q. FDA approval -- The FDA approval of the</p> <p>19 drug?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. Last sentence of that paragraph,</p> <p>22 If you can fit it into your schedule, we would be</p>	<p style="text-align: right;">236</p> <p>1 Q. Do you recall if you were one of the</p> <p>2 people who gave approval for marketing the</p> <p>3 Roxicodone product?</p> <p>4 MR. GASTWIRTH: Objection. Form.</p> <p>5 THE DEPONENT: I -- I believe I</p> <p>6 certainly was a part of the senior management</p> <p>7 team that -- that would have heard the</p> <p>8 recommendation and would have agreed to -- to</p> <p>9 marketing it.</p> <p>10 BY MR. FAUCI:</p> <p>11 Q. I direct your attention to page 23.</p> <p>12 It's Shaffer 001474. The heading is Market</p> <p>13 Situation, Market Characteristic Summary.</p> <p>14 A. Got it.</p> <p>15 Q. Do you see at the bottom it says price</p> <p>16 and reimbursement driven. Do you see that?</p> <p>17 A. I see that.</p> <p>18 Q. At the top it's market characteristics</p> <p>19 summary. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Let's break that down. What does it</p> <p>22 mean for something to be price driven?</p>
<p style="text-align: right;">235</p> <p>1 happy to present the launch plan to you and</p> <p>2 whoever you think is appropriate in Ridgefield.</p> <p>3 Do you recall if this launch plan was presented</p> <p>4 to you in Ridgefield?</p> <p>5 A. I do not recall.</p> <p>6 Q. Do you recall if you read the launch</p> <p>7 plan?</p> <p>8 A. I don't recall specifically if I did or</p> <p>9 didn't.</p> <p>10 Q. Do you recall whether you approved the</p> <p>11 launch of the Roxicodone product?</p> <p>12 MR. GASTWIRTH: Objection. Form.</p> <p>13 THE DEPONENT: The way you've said it</p> <p>14 is basically we put together a data package for</p> <p>15 FDA approval, which meant that the decision was</p> <p>16 that we would move ahead once approved to market</p> <p>17 the drug.</p> <p>18 So this would have been not just a sole</p> <p>19 decision on my part. Okay. This would have</p> <p>20 involved Gerstenberg, Russillo, other people.</p> <p>21 Medical department, regulatory department.</p> <p>22 BY MR. FAUCI:</p>	<p style="text-align: right;">237</p> <p>1 MR. GASTWIRTH: Objection. Form.</p> <p>2 THE DEPONENT: What it means and versus</p> <p>3 -- Its relative importance with Roxicodone and my</p> <p>4 estimation may be two different things. So, you</p> <p>5 know, to me price driven refers almost to a</p> <p>6 straight multi-source type of product.</p> <p>7 But again, if my memory is correct,</p> <p>8 with Roxicodone the proposal was to launch it</p> <p>9 with 15-milligram and 30-milligram forms, which</p> <p>10 it says here. And I believe there was no generic</p> <p>11 competition to those particular dosage forms.</p> <p>12 So the reason for, in fact, putting</p> <p>13 together the data package to gain FDA approval</p> <p>14 was to, in fact, offer advantages unique to</p> <p>15 Roxicodone versus other generic Oxycodone</p> <p>16 products.</p> <p>17 BY MR. FAUCI:</p> <p>18 Q. What type of advantages?</p> <p>19 A. Well, the fact that -- the predominant</p> <p>20 advantage would have been a number of pills that</p> <p>21 one had to take. So again, my memory isn't</p> <p>22 perfect here, but I know there was a 5-milligram</p>

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<p style="text-align: right;">258</p> <p>1 and with the United States government. The State</p> <p>2 -- The remaining state is the State of Florida</p> <p>3 having resolved the Ven-a-Care Texas cases</p> <p>4 regarding -- relating to Roxane and the Ven-a-</p> <p>5 Care California matter relating to Roxane.</p> <p>6 MR. GASTWIRTH: And I'll just make a</p> <p>7 statement on the record that I'm going to</p> <p>8 reiterate my objection at the beginning of</p> <p>9 today's deposition with respect to any cross-</p> <p>10 notices that occurred in any other states last</p> <p>11 minute that we were surprised with and any</p> <p>12 testimony by Mr. Berkle being used in connection</p> <p>13 with any other cases outside of the DOJ case for</p> <p>14 which this deposition had been originally</p> <p>15 noticed.</p> <p>16 BY MR. BREEN:</p> <p>17 Q. Okay. We'll deal with that later.</p> <p>18 Hopefully we won't -- Hopefully we won't be</p> <p>19 taking your deposition again in the Florida case.</p> <p>20 I'm going to do all I can to avoid that --</p> <p>21 A. I would appreciate that.</p> <p>22 Q. -- today. So you can be routing for me</p>	<p style="text-align: right;">260</p> <p>1 Q. The U.S. parent.</p> <p>2 A. Of BIPI.</p> <p>3 Q. But you during your tenure at</p> <p>4 Boehringer Ingelheim -- And I'll use that</p> <p>5 generally to mean the U.S. operations unless I</p> <p>6 say otherwise. Okay?</p> <p>7 A. Fine.</p> <p>8 Q. During your tenure there, were you</p> <p>9 aware as to whether or not the boards of BIPI and</p> <p>10 Boehringer Ingelheim Corporation had identical</p> <p>11 memberships?</p> <p>12 MR. GASTWIRTH: Objection. Form.</p> <p>13 THE DEPONENT: I am not aware that they</p> <p>14 have identical memberships.</p> <p>15 BY MR. BREEN:</p> <p>16 Q. Were you a member of either board?</p> <p>17 A. No, I was not.</p> <p>18 Q. Did you ever attend any of their board</p> <p>19 meetings?</p> <p>20 A. I would attend some meetings partially</p> <p>21 if an agenda item reflected the BIPI</p> <p>22 pharmaceutical business.</p>
<p style="text-align: right;">259</p> <p>1 on that one.</p> <p>2 All right. Let's get started.</p> <p>3 Just for context, you went to the U.S.</p> <p>4 operations of Boehringer Ingelheim in what year?</p> <p>5 A. 1994.</p> <p>6 Q. 1994. And from 1994 until you left in</p> <p>7 2003?</p> <p>8 A. End of 2003.</p> <p>9 Q. End of 2003. You at no time worked</p> <p>10 directly for or as an employee of Roxane</p> <p>11 Laboratories, did you?</p> <p>12 A. That's correct.</p> <p>13 Q. You at all times worked for the entity</p> <p>14 known as Boehringer Ingelheim Corporation?</p> <p>15 A. More correctly Boehringer Ingelheim</p> <p>16 Pharmaceuticals, Inc.</p> <p>17 Q. Okay. Which is -- the acronym for that</p> <p>18 is BIPI, correct?</p> <p>19 A. Correct.</p> <p>20 Q. The Boehringer Ingelheim Corporation is</p> <p>21 the parent of BIPI?</p> <p>22 A. The U.S. parent.</p>	<p style="text-align: right;">261</p> <p>1 Q. Did you ever attend a meeting of the</p> <p>2 two corporations' boards that was held jointly?</p> <p>3 MR. GASTWIRTH: Objection. Form.</p> <p>4 THE DEPONENT: I don't recall.</p> <p>5 BY MR. BREEN:</p> <p>6 Q. Do you recall whether -- which</p> <p>7 corporation's board you met with?</p> <p>8 MR. GASTWIRTH: Objection. Form.</p> <p>9 THE DEPONENT: The -- Certainly the</p> <p>10 majority of the meetings I would have attended as</p> <p>11 an observer or for a particular agenda item would</p> <p>12 be the BIC board.</p> <p>13 BY MR. BREEN:</p> <p>14 Q. The Boehringer Ingelheim Corporation</p> <p>15 board?</p> <p>16 A. Correct.</p> <p>17 Q. And where was -- And when I say BIC, we</p> <p>18 mean Boehringer Ingelheim Corporation, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Where was BIC headquartered?</p> <p>21 A. In Ridgefield, Connecticut.</p> <p>22 Q. Who was the president during your</p>

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<p style="text-align: right;">262</p> <p>1 tenure?</p> <p>2 MR. GASTWIRTH: Objection. Form.</p> <p>3 THE DEPONENT: Werner Gerstenberg.</p> <p>4 BY MR. BREEN:</p> <p>5 Q. And who was the president of BIPI</p> <p>6 during your tenure?</p> <p>7 A. There was no president of BIPI.</p> <p>8 Q. Then who was the chief executive</p> <p>9 officer that ran the company?</p> <p>10 A. Again, my position I believe was the</p> <p>11 highest level position within BIPI reporting to</p> <p>12 the present CEO of BIC.</p> <p>13 Q. Okay. So all and all Mr. Gerstenheimer</p> <p>14 was your boss?</p> <p>15 A. Mr. Gerstenberg.</p> <p>16 Q. Gerstenberg. I apologize.</p> <p>17 Mr. Gerstenberg was your boss?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Now, let's talk a little bit</p> <p>20 more about Roxane. I've heard your testimony</p> <p>21 today in response to the Department of Justice's</p> <p>22 questions, and after going back through the</p>	<p style="text-align: right;">264</p> <p>1 for marketing -- sales and marketing of BIPI</p> <p>2 branded products. For Roxane branded products I</p> <p>3 had responsibility for certain periods of time</p> <p>4 during my tenure.</p> <p>5 As an example, after year 2000 I had no</p> <p>6 involvement whatsoever. Oh, I'm sorry, I</p> <p>7 shouldn't say that. Let me rescind that comment.</p> <p>8 That after 2000 I had no involvement with Roxane</p> <p>9 multi-source business whatsoever. I already</p> <p>10 stated in my previous testimony that sometime</p> <p>11 after 2000 the Roxane branded business</p> <p>12 disappeared.</p> <p>13 BY MR. BREEN:</p> <p>14 Q. That's because the Roxane corporate</p> <p>15 entity was turned into a manufacturing entity?</p> <p>16 MR. GASTWIRTH: Objection. Form.</p> <p>17 THE DEPONENT: The -- Certainly the</p> <p>18 physical company was a manufacturing site. The</p> <p>19 Roxane products were combined together with the</p> <p>20 Ben Venue products under the leadership of Tom</p> <p>21 Russillo in terms of relative to the marketing</p> <p>22 and sales and product development, sorry. Also</p>
<p style="text-align: right;">263</p> <p>1 deposition that we took some time ago, I got -- I</p> <p>2 gathered a certain impression. I'm going to</p> <p>3 state that to you and tell me -- I want you to</p> <p>4 tell me if I'm correct or not.</p> <p>5 When it came to branded pharmaceuticals</p> <p>6 being marketed by Boehringer Ingelheim's U.S.</p> <p>7 operations, you generally had some</p> <p>8 responsibilities for the sales and marketing</p> <p>9 aspects?</p> <p>10 MR. GASTWIRTH: Objection. Form.</p> <p>11 THE DEPONENT: For the -- You're</p> <p>12 talking about the branded business within BIPI?</p> <p>13 BY MR. BREEN:</p> <p>14 Q. I'm talking about the branded business</p> <p>15 in general.</p> <p>16 MR. GASTWIRTH: Objection. Form.</p> <p>17 THE DEPONENT: The --</p> <p>18 MR. GASTWIRTH: I mean, there are --</p> <p>19 MS. ROGERS: Please don't make speaking</p> <p>20 objections.</p> <p>21 THE DEPONENT: Let me -- Let me just</p> <p>22 state that throughout my tenure I was responsible</p>	<p style="text-align: right;">265</p> <p>1 product development.</p> <p>2 BY MR. BREEN:</p> <p>3 Q. And about when was that in 2000?</p> <p>4 A. I don't remember the specific dates.</p> <p>5 Q. Do you recall if it was earlier or</p> <p>6 later in the year?</p> <p>7 A. You know what, I don't even want to</p> <p>8 hazard to guess.</p> <p>9 Q. Why don't you take a look at Exhibit 32</p> <p>10 -- or 35 which -- What happened to the originals?</p> <p>11 A. Yeah. It's right here.</p> <p>12 Q. Thank you.</p> <p>13 A. Okay.</p> <p>14 Q. This is dated August 22nd, 2000.</p> <p>15 A. Right.</p> <p>16 Q. And this is the one where you and Mr.</p> <p>17 Gerstenberg are approving Roxicodone prices. Do</p> <p>18 you see that?</p> <p>19 A. Yes, I do.</p> <p>20 MR. GASTWIRTH: Objection. Form.</p> <p>21 BY MR. BREEN:</p> <p>22 Q. Is there any doubt in your mind that</p>